



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]

AUG 31 2000

Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER [REDACTED]

Public Copy

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition and subsequent motion to reopen and reconsider were denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a subsidiary of its parent company engaged in buying and selling land or properties, organizing commercial development projects, assisting in obtaining mortgage or other financing, selecting contractors and architects, and directing sales of new developments. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not submitted all of the requested documentation and had not established that the beneficiary would be employed in a managerial or executive capacity.

On appeal, counsel states that:

Notice denying reconsideration is vague and confusing.

To the extent that denial can be understood, Service is in error to hold that insufficient evidence was submitted regarding locale of company and duties of applicant.

Counsel had indicated that additional evidence would be submitted in support of the appeal on or before December 12, 1997. To date, no additional evidence has been received. Therefore, the record must be considered complete.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

8 C.F.R. 204.5(j)(3) states:

(i) *Required evidence.* A petition for a multinational executive or manager must be accompanied by a statement from an authorized official of the petitioning United States employer which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

At issue is whether the beneficiary will be performing managerial or executive duties.

8 C.F.R. 204.5(j)(5) states:

Offer of employment. No labor certification is required for

this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his decision, the director noted that the petitioner had not provided the following requested information pertaining to the beneficiary: position title; duties; percentage of time spent on each duty; number of subordinate managers/supervisors or other employees who report directly to the beneficiary and a brief description of their job duties; the essential function the beneficiary manages if no other employees are supervised; and specific dates the beneficiary's employment began and ended in each position within the petitioning entity.

In an undated document, the beneficiary describes his duties and the organizational structure as follows:

I direct all these activities [buying and selling land or properties, organizing commercial development projects, assisting in obtaining mortgage or other financing, selecting contractors and architects, and selling new developments] and report to no one. I have a staff of three in the United States including an administrator, a sales and market representative and an office worker.

The duties of these people are: the administrator handles the files of the company, pays the bills, writes down the checks, keeps record of the banks [sic] statements, keeps record of the clients of the company. Handles relations with the banks and does the paperwork required by them.

The sales and market representative keeps contact with real state [sic] agencies, defines with the President the case that [will] be negotiable and profitable to the corporations [sic] interest. Handles the correspondence with clients and investors.

The office worker answers phone calls, deals with errands, transportation of the clients, keeps the office in good condition and takes care of the maintenance of the properties of the company.

The record indicates that the U.S. entity was incorporated on October 5, 1995, and the present petition was filed on February 25, 1997. The record further indicates that the beneficiary arrived in the U.S. in September of 1995 as a B-2 nonimmigrant for pleasure. The record contains the U.S. entity's 1996 corporate tax return reflecting \$32,919 in gross receipts or sales; \$10,800 in compensation of officers; and \$6,270 in salaries and wages. Although the beneficiary claims to have a staff of three employees, the evidence in the record indicates that the beneficiary has only

two subordinate employees, [REDACTED] and [REDACTED]. The quarterly earnings statement for September 30, 1996, reflects that both of the subordinate employees had quarterly earnings of \$1,430, indicating that they perform only minimal duties. As such, the petitioner has not established that rather than directing the duties of buying and selling land or properties, organizing commercial development projects, assisting in obtaining mortgage or other financing, selecting contractors and architects, and selling new developments, the beneficiary is performing them.

Upon review of the record, the petitioner has not demonstrated that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. There is no comprehensive description of the beneficiary's duties that persuasively demonstrates that the beneficiary will be performing in a primarily managerial or executive capacity. There is no evidence to establish that the petitioner employs a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing nonqualifying duties. The record contains no comprehensive description of the beneficiary's duties that demonstrates that the beneficiary will be managing or directing the management of a department, subdivision, function, or component of the petitioning organization. For this reason, the petition may not be approved.

Beyond the decision of the director, the record is not persuasive in demonstrating that the petitioner has the ability to pay the salary offered. 8 CFR 204.5(g)(2) states that the petitioner shall submit evidence of the ability to pay the wage offered in the form of copies of annual reports, federal tax returns, or audited financial statements. The petitioner claims to have a gross annual income of \$180,000 and a net annual income of \$75,000. However, the information on the petitioner's 1996 corporate income tax return mentioned above does not support these figures. The record also is not persuasive that the foreign entity is doing business. It is noted that the financial data of the foreign entity's financial documents have not been converted to United States currency rates. The record does not contain an offer of employment pursuant to 8 CFR 204.5(j)(5), nor has the petitioner submitted sufficient evidence that the beneficiary has the qualifying employment with the foreign entity. As this matter will be dismissed on the grounds discussed, these issues need not be examined further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.